

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

M.P., a minor, by and through his guardian
ad litem, Roy McCollum, individually and
as successor in interest to Decedent
BRITTANY CAITLIN MCCULLUM; and
ROY MCCOLLUM, individually,

Plaintiffs,

v.

COUNTY OF SAN JOAQUIN, a public
entity; San Joaquin County Sheriff
PATRICKWITHROW; San Joaquin
County Employees PAULA ALEYDA
ARAGON DE GONZALEZ, LVN; MARY
M. CENDANA, RN; and County of San
Joaquin DOES 1-50, jointly and severally,

Defendants.

No. 2:23-cv-00245 AC

ORDER

Before the court is the ex parte Petition for the Appointment of Guardian Ad Litem. ECF
No. 9.

Under Federal Rule of Civil Procedure 17(c)(2), “[a] minor or an incompetent person who
does not have a duly appointed representative may sue by a next friend or by a guardian ad
litem.” Fed. R. Civ. P. 17(c)(2). Local Rule 202 provides the following additional requirements:

(a) Upon commencement of an action or upon initial appearance in
defense of an action by or on behalf of a minor or incompetent
person, the attorney representing the minor or incompetent person
shall present (1) appropriate evidence of the appointment of a
representative for the minor or incompetent person under state law

1 or (2) a motion for the appointment of a guardian ad litem by the
2 Court, or, (3) a showing satisfactory to the Court that no such
3 appointment is necessary to ensure adequate representation of the
4 minor or incompetent person.

5 ...

6 (c) Disclosure of Attorney's Interest. When the minor or incompetent
7 is represented by an attorney, it shall be disclosed to the Court by
8 whom and the terms under which the attorney was employed;
9 whether the attorney became involved in the application at the
10 instance of the party against whom the causes of action are asserted,
11 directly or indirectly; whether the attorney stands in any relationship
12 to that party; and whether the attorney has received or expects to
13 receive any compensation, from whom, and the amount.

14 E.D. Cal. L.R. 202.


15 The Ninth Circuit has held that "[a]lthough the [district] court has broad discretion and
16 need not appoint a guardian ad litem if it determines the person is or can be otherwise adequately
17 protected, it is under a legal obligation to consider whether the person is adequately protected."
18 United States v. 30.64 Acres of Land, More or Less, Situated in Klickitat County, State of Wash.,
19 795 F.2d 796, 805 (9th Cir.1986). Fit parents are presumed to act in the best interests of their
20 children. Troxel v. Granville, 530 U.S. 57, 66 (2000); Doe v. Heck, 327 F.3d 492, 521 (7th Cir.
21 2003).

22 Here, plaintiffs ask that Roy McCollum be appointed guardian ad litem for his minor
23 grandchild, plaintiff M.P., as he acts as successor in interest to M.P.'s mother (Roy McCollum's
24 daughter) Brittany Caitlin McCullum, who is deceased. ECF No. 9 at 2. Plaintiffs provided an
25 affidavit from Mr. McCollum stating that he is M.P.s legal guardian and provided a copy of
26 Brittany McCullum's death certificate. ECF Nos. 10, 10-1. Plaintiffs did not, however, comply
27 with Local Rule 202(c) and disclose their attorney's interest.

28 It is therefore ORDERED that plaintiffs' counsel submit a supplemental declaration in
compliance with Local Rule 202(c) within 7 days of this order.

IT IS SO ORDERED.

DATED: May 9, 2023


ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE